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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,058	04/09/2004	David Scott Ross	DR01	3057
27797	7590	11/28/2005		
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			EXAMINER ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,058	Applicant(s) ROSS ET AL.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings filed on 09 April 2004 are objected to under 37 CFR 1.52 because surface shading shown is not appropriate in figures 3-5. Solid black surface shading is not permitted. Corrected drawings are required.

Specification

2. The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks. All letters of the Tradename should be capitalized, not just the first letter. That is readily apparent throughout the application. Therefore, no need to point out to specific page and line.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meharg (5,566,935) in view of Sugimoto (3,065,566) and Delker (5,335,906).

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Regarding claim 1, Meharg shows an inflatable three-dimensional figure having a torso (the upper portion of the dummy above divider 24); legs terminating in feet (18); arms (see figure 1); an inflatable three-dimensional head (see figure 1). Meharg shows the dummy is divided into a plurality of compartments so a leak is confined to only one portion of the entire dummy. Meharg shows the body is divided into the upper compartment (above divider 24) the central compartment (between divider 24 and 25) and the lower compartment (the area below divider 25). Meharg shows that other arrangements can be used, but does not expressly disclose the head region being a separate compartment. Sugimoto shows an inflatable toy, wherein the toy includes a hollow body portion (1) and detachable body parts (arms, legs and head). In view of Sugimoto it would have been obvious to form Meharg's inflatable dummy with detachable body parts, the motivation being to permit various poses of the parts and that would allow the body parts to be readily detachable and rotatable. Additionally, Meharg shows various means can be used to either permanently or releasably attach the feet (18) to a platform (14) in order to stably secure the inflatable dummy (see column 2, lines 18-28).

Meharg does not expressly disclose the use of weighted material positioned in the feet of the dummy to make the dummy self-supporting. Delker shows a dummy (11) that has a first valve (19) positioned in the upper end portion (13) for inflating air into the dummy and a second valve (31) positioned in the lower end portion (14) so the hollow chamber (29) can be filled with any suitable ballast material (30). Doynow shows an inflatable dummy having a plurality of valves for inflating the dummy (see figure 2). In view of Doynow it would have been obvious to one of ordinary skill in the art to have included suitable ballast material in the feet of Meharg's dummy, the motivation being for additional stability and support.

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Regarding claim 2, Meharg as modified in view of Sugimoto additionally show the head is attachable to the torso by means of a first patch fixed to the base of said head and second patch fixed to the top of said torso, where one patch comprises a multiplicity of exposed hooks and the other patch comprises an exposed fabric to which said hooks attach. It should be noted that the broadest reasonable interpretation of first and second patches would include the combination of projections and grooves as shown in figure 2 of Sugimoto.

Regarding claim 3, Meharg as modified in view of Sugimoto additionally show the head can be attached and turned in any direction relative to the body.

Regarding claims 4 and 5, Meharg shows the torso has at least two chambers (26 and 28) and the legs have one independent chamber (29).

Regarding claims 6 and 7, Meharg as modified in view of Delker shows any suitable ballast material can be used e.g. sand.

Regarding claim 8 and 9, Meharg does not expressly disclose the height of the dummy, but teaches that the height is adjustable and the dummy can be made in several sizes or more expansion areas may be included (see column 3, lines 34-39).

Regarding claims 10 and 11, Meharg shows the head has a face and the body has a uniform.

Regarding claims 12 and 13, Meharg as modified in view of Delker shows the dummy can be made of a nylon material. It is noted that although Meharg does not expressly disclose the material used to form the dummy, it is understood in the art that is formed of a flexible plastic material.

Regarding claim 14, Meharg additionally shows the bottom of the dummies feet (18) is flat (see figure 3).

Regarding claim 15, Meharg shows the dummy is holding a bat (see figure 1).

Regarding claim 16, Meharg shows the dummy is wearing a cap (see figure 1).

Regarding claim 17, note the rejection of claims 1, 3, 10, 11 and 15.

Regarding claim 18, note the rejection of claim 4.

Regarding claim 19, note the rejection of claim 5.

Regarding claim 20, note the rejection of claims 1, 2, 4, 6 and/or 7, 10, 11 and 15.

Response to Arguments

5. Applicant's arguments filed 21 September 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., two types of valves, one having a small opening and one having a large opening; feet that can be placed anywhere) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regards to applicant's assertion that Meharg dummy is attached to a platform and the applicant's dummy is not. Securing the feet of the dummy to stably support the dummy is well known and so is providing a weighted base. Therefore, nothing unobvious would regards to providing a means for keeping a dummy upright.

With regards to applicant's assertion that the head is removably attached so it could be moved to the left or right, such is well known and not only demonstrated by Sugimoto but also

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shown by Nelson (D 376,396). The applicant appears to argue that one skilled in the art would have been lead away from employing Meharg's practice device because it "could lead to player injury". This argument, however, is not persuasive since it is speculative and is not supported by any objective evidence. In re DeBlauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); In re Lindner, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972).

As applicant may well be aware inflatable dummies are well known in the toy art, hunting art, sport art etc. and there is nothing unobvious to make one or more of the body parts movable. Also nothing unobvious to provide additional valves in order to allow faster inflation and deflation of the dummy. As indicated above securing the dummy to a support surface (i.e. indoors and/or outdoors) is also well known. Utilizing weighted material (i.e. sand, water), stakes, suction cups etc. are all well known. This is also taught by Putnam ('739), see column 4, lines 20-23. In conclusion applicant is claiming a self-supporting inflatable dummy having a plurality of valves for inflating the dummy and has a movable head.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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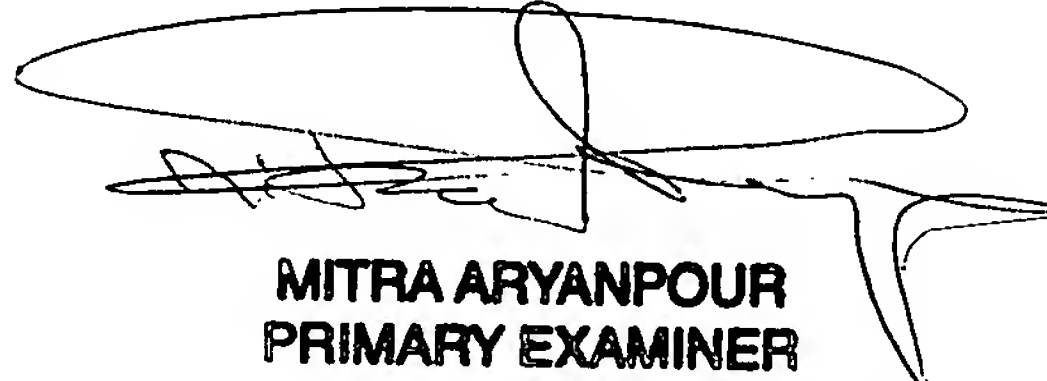
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 10:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

23 November 2005



MITRA ARYANPOUR
PRIMARY EXAMINER